

**STATE OF RHODE ISLAND
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
PUBLIC NOTICE OF PROPOSED RULE-MAKING**

AMENDMENT TO NOTICE: PUBLIC HEARING SCHEDULED

In accordance Rhode Island General Laws (RIGL) 42-35, notice is hereby given that the Executive Office of Health and Human Services proposes to adopt the following OHHS rule:

ACCESS TO PUBLIC RECORDS REGULATIONS

The Executive Office of Health and Human Services (EOHHS) has proposed this Regulation to set forth the specific rules and procedures applicable to access to public records maintained by the Department of Human Services; Department of Children, Youth and Families; Department of Behavioral Healthcare, Developmental Disabilities and Hospitals and the Department of Elderly Affairs; and the Department of Health as detailed in the current rules and regulations of the Department of Health regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health. EOHHS recognizes both the public's right to access public records and the individual's right to dignity and privacy. It is the EOHHS policy to facilitate public access to all public records that may be disclosed in accordance with RIGL § 38-2-1, et seq. It is also the policy of the EOHHS to ensure all public records under its jurisdiction be available for public inspection and reproduction consistent with all applicable state and/or federal law, unless otherwise prohibited by a court of competent jurisdiction.

In the development of these rules, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach or duplication or overlap was identified based upon available information.

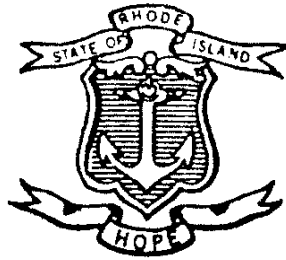
These proposed rules are accessible on the R.I. Secretary of State website (<http://www.sec.state.ri.us/ProposedRules/>) and the OHHS website (www.ohhs.ri.gov) or available in hard copy upon request (401 462-2018 or RI Relay, dial 711). A public hearing will be held to consider the proposed rule adoption on **Tuesday, March 29, 2011 at 4:00 PM at the DaVinci Center for Community Progress, Inc., 470 Charles Street, Providence, RI 02904**. Persons wishing to testify may do so by signing up at the Hearing or by submitting written testimony by Friday, April 1, 2011 to Kimberly Merolla-Brito, Office of Policy Development, RI Department of Human Services, Louis Pasteur Building, 57 Howard Avenue Fl # 1, Cranston, RI 02920.

The Hearing will begin at 4:00 P.M. and will conclude when the last speaker finishes testimony or at 6:00 P.M., whichever occurs first. The seating capacity of the DaVinci Center will be enforced and therefore the number of persons participating in the Hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The DaVinci Center is accessible to the handicapped. Individuals with hearing impairments may request an interpreter's presence by calling 711 or Relay RI 1-800-745-6575 (Voice) and 1-800-745-555 (TDD). Requests for this service must be made at least 72 hours in advance of the Hearing date.

The Executive Office of Health and Human Services does not discriminate against individuals based on race, color, national origin, sex, gender identity or expression, sexual orientation, religious belief, political belief or handicap in acceptance for or provision of services or employment in its programs or activities.

Rhode Island
Executive Office of Health and Human Services



Access to Public Records Regulations

May 1, 2011

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
ACCESS TO PUBLIC RECORDS
RULES AND REGULATIONS

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Section 1.0 Authority

- 1.1 This Regulation is promulgated pursuant to Rhode Island General Laws (RIGL) § 38-2-1, et seq. (Access to Public Records) and § 42-35-2(a) (Administrative Procedures).

Section 2.0 Purposes

- 2.1 The purposes of this Regulation are:
1. To establish consistency with implementation of RIGL § 38-2-1, et seq. and § 42-35-2(a) relating to access to public records maintained by the Department of Human Services; Department of Children, Youth and Families; Department of Behavioral Healthcare, Developmental Disabilities and Hospitals and the Department of Elderly Affairs; and the Department of Health as detailed in the current rules and regulations of the Department of Health regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health;
 2. To identify and delineate categories of records exempt from disclosure; and,
 3. To provide the public with rules and procedures for accessing public records maintained by each of the State agencies set forth in subsection (1) above.

Section 3.0 Policy

- 3.1 The Executive Office of Health and Human Services (EOHHS) recognizes both the public's right to access public records and the individual's right to dignity and privacy. It is the EOHHS policy to facilitate public access to all public records that may be disclosed in accordance with RIGL § 38-2-1, et seq. It is also the policy of the EOHHS to ensure all public records under its jurisdiction be available for public inspection and reproduction consistent with all applicable state and/or federal law, unless otherwise prohibited by a court of competent jurisdiction.

Section 4.0 Procedure for Requesting Public Records

Public Records

- 4.1 All records defined as public record in Chapter 38-2 of the RIGL shall be open for public inspection during normal business hours of the Departments.
- 4.2 A request for inspection of records described herein shall be presented during the regular business hours of the Departments and must reasonably describe the records sought in a way that will permit their identification and location by Department personnel. All requests for records shall be in writing unless readily available or available under the Administrative Procedures Act. Forms adopted by

EOHHS to request to inspect and/or reproduce public records as well as response to requests can be obtained at www.ohhs.ri.gov. If the description of records sought in the request is not sufficient to allow the specific Department to identify and locate the requested records, the Department will notify the requestor that additional information is required. The Departments will make every reasonable effort to honor the request; however, it shall not in any way interfere with the ordinary course of business of the Departments. Nothing herein shall be construed as requiring the Departments to reorganize, consolidate, or compile data not maintained by the Departments in the form requested at the time the request to inspect such record is made except to the extent that such records are in an electronic format and the Departments would not be unduly burdened in providing such data.

Official Publications

- 4.3 Official publications, which the Departments prepare in the discharge of duty to inform the public on matters of public interest, shall be furnished free of charge when available.

Copy of Rules and Regulations

- 4.4 The Departments will supply one paper copy of its rules and regulations, on a particular subject, to an individual requesting the same, free of charge. Rules and regulations of the Departments are also available from the Office of the Secretary of State and certified copies thereof may be obtained from that office.

Fee for Records

- 4.5 The Departments may charge a fee of fifteen cents (\$.15) per page for documents copied on common letter or legal size paper. The Departments will charge the reasonable actual cost for providing electronic records. A reasonable charge may be made for the search or retrieval of documents. Hourly costs for search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of the search and retrieval.

Payment in Advance

- 4.6 All payments for copies shall be made in advance of delivery. The Departments shall inform the requesting person at the time a request for records is made, or as soon thereafter as possible, the approximate cost that will be incurred for the requested records, and the actual cost will be collected prior to delivery of the requested records. The Departments may require the payment of the approximate costs prior to a search and/or retrieval to ensure that unnecessary costs are not incurred by the Departments when the requesting party decides after the search and/or retrieval not to obtain the requested records.

Granting/Denying Requests

4.7 A request for records shall be granted if the above procedure has been followed and records sought are not specifically exempt from public disclosure. Any denial of the right to copy records shall be made by the custodian of the record to the person requesting same. The denial shall be in writing giving the specific reasons for the denial within ten (10) business days of such request. If the records are not made available within ten (10) business days of the request, it shall be deemed a denial. However, for good cause shown, the ten (10) day limit may be extended to thirty (30) business days. In the case of denial, the requestor may petition the Director of the appropriate Department for a review of the denial. The Director shall render her/his decision within ten (10) business days after submission of the review petition. If the Director also denies the request, or refuses to review the petition, or goes beyond the ten (10) business day limit, the person seeking the record may institute proceedings for injunctive or declaratory relief in the Superior Court or file a complaint with the Department of the Attorney General.

Non-disclosable Information

4.8 Evidence submitted, and accepted, on a confidential basis pursuant to section 4.9 of these rules shall not be available for public inspection. If a record contains both disclosable and nondisclosable information, the disclosable portion will be available for inspection unless it cannot reasonably be segregated from the rest of such record.

Contents of Records

4.9 The record shall, at all reasonable times, be available for inspection by the parties. Confidential, proprietary, or trade secret information including information qualifying as a non-public record under sub-section 38-2-2(d) shall, upon motion of a party and for good cause shown, be received at a closed hearing and not be released for public scrutiny. Any such evidence received on a confidential basis shall not be subject to disclosure. The record of every contested case shall include the hearing notice, all pleadings, motions, all rulings, exhibits, evidence considered, statements of matters officially noted, proposed findings of fact and law and exceptions claimed thereto, decision and/or order, proposed decision and/or order.

Exculpatory Material

4.10 Any Department attorney or employee, appearing in an adjudicatory proceeding on behalf of the Departments, has a duty to disclose to the other parties to the proceeding: relevant material or information which supports the position of any other party, where the value of the material or information to that party is or should have been apparent, or where disclosure of the material or information is specifically requested by a party. The duty of the attorney or employee extends to material or information within her/his personal knowledge or possession, or in the

possession or control of or known by any person who assisted the Departments in the investigation or preparation of the proceeding, and who either regularly reports to or with reference to the particular proceeding has reported to the attorney or employee.

Section 5.0 *Severability*

5.1 If any provision of these rules and regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end the provisions of these rules and regulations are declared to be severable.